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ORIGINAL
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Virginia

March 21, 1991

RECEIVED

MAR 21 1991

Ms. Donna R. Searcy, Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

RE: MM Docket No. 91-10
Baldwin, ~~Florida~~
M&A #15111

Dear Ms. Searcy:

On behalf of Charley Cecil & Dianna Mae White, d/b/a White Broadcasting Partnership, Applicant for a new FM Station at Baldwin, Florida in the above-referenced Docket proceeding, there is transmitted herewith an original plus six (6) copies of a Motion for Summary Decision with respect to the air hazard issue designated against White.

Should there be any questions regarding the attached Motion for Summary Decision, please contact the undersigned.

Very truly yours,


Denise B. Moline

DBM:wp
Attachment

ORIGINAL

BEFORE THE
Federal Communications Commission

WASHINGTON, D.C.

RECEIVED

MAR 21 1991

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of)
Charley Cecil & Dianna)
Mae White, d/b/a)
WHITE BROADCASTING PARTNERSHIP)
et al.)
For Construction Permit)
for a new FM Station, Channel 289A)
Baldwin, Florida)
To: Honorable Edward Luton)
Administrative Law Judge)

MM DOCKET NO. 91-10
FILE NO. BPH-891214MM

MOTION FOR SUMMARY DECISION¹

Charley Cecil & Dianna Mae White, d/b/a WHITE BROADCASTING PARTNERSHIP ("White") by Counsel, and pursuant to §1.251 of the Commission's Rules, hereby seeks summary decision on the air hazard issue specified against it in the Hearing Designation Order, DA 91-122 (Released February 11, 1991) ("HDO").

1. White herein moves for summary decision on the air hazard issue, and declares that it will accept the imposition of the following condition upon any grant of its application:

Upon receipt of notification from the Federal Communications Commission that harmful interference is being caused by the operation of the licensee's

¹White acknowledges that Peaches Broadcasting, Ltd. ("Peaches") has filed a "Contingent Motion for Summary Decision" on the air hazard issues designated against itself, White, Douglas Johnson, and Northeast Florida Broadcasting Corp. However, in the event that Motion is denied, White herewith submits its own Motion for Summary Decision, and requests separate consideration on the merits of this Motion.

(permittee's) transmitter, the licensee (permittee) shall either immediately reduce the power to the point of no interference, cease operation, or take such immediate corrective action as necessary to eliminate the harmful interference. This condition expires after one year of interference-free operation.

2. White has received a notice from the Federal Aviation Administration ("FAA") regarding potential EMI to air navigation systems in the Jacksonville, Florida area. A copy of that determination, together with a clarification dated March 14, 1991, is attached. (Attachment 1) As set forth in the clarification, the FAA's air hazard determination is predicated solely on a determination that White's proposed tower site would create a potential for EMI (electromagnetic interference) with aeronautical navigation equipment of the local Jacksonville airports. The FAA's clarification letter states unequivocally that the FAA's preliminary review did not reveal that any FAR Part 77 obstruction standards were exceeded. Thus, White's proposed structure poses no physical hazard to air navigation.

3. As set forth in the "Contingent Motion for Summary Decision" filed by Peaches Broadcasting, Ltd. on March 13, 1991, all the applicants' proposals in the Baldwin proceeding, including that of JEM Productions Limited Partnership, will pose EMI problems under the FAA's current prediction program. Further, it was represented therein that there is no possible site which would meet FCC coverage, spacing and interference requirements, that would also resolve the FAA's EMI questions.

Any transmitter located within the fully-spaced zone for Baldwin would cause EMI problems.² White concurs with this analysis.

4. EMI problems in general have been the subject of controversy between the Commission and the FAA.³ However, in cases where EMI is the sole navigational problem, the FCC has permitted applications to be granted with a condition that any harmful interference be eliminated. Indeed, imposition of such a condition is consistent with the interim procedures agreed to between the FCC and the FAA in 1985, relating to the establishment of technical criteria for siting of broadcast facilities with respect to aeronautical navigation and communication facilities. As set forth in a July 12, 1985 letter from then-FCC Chairman Mark Fowler to then-FAA Administrator Donald Engen, the FCC and FAA would, as an interim matter, not preclude the grant of broadcast authorizations as to which the FAA believed there to be some electromagnetic interference question. Instead, the interim policy called for the FAA to advise the FCC of those applications which the FAA identified as raising potential EMI questions, and the FCC would add appropriate limited conditions on any such authorizations. Those conditions were fully acceptable to the FCC.

²See Peaches' "Contingent Motion" at p. 2.

³See, e.g., Broadcasting Magazine, "Interference Issue Heats Up Between FCC, FAA", February 18, 1991, at p. 58.

5. Moreover, the Communications Act grants the FCC sole jurisdiction over communications frequencies and communications towers. See 47 U.S.C. §303(c),(f),(q). The FCC is empowered to assign bands of frequencies to the various classes of stations, and to assign frequencies for each individual station and determine the power which each station shall use, and is empowered to make such regulations not inconsistent with law as it may deem necessary to prevent interference between stations. The FAA on the other hand, is authorized to make recommendations regarding tower structures when such pose possible physical hazards to air navigation, and to require the painting and or illumination of radio towers if and when in its judgment such towers constitute, or there is reasonable possibility that they may constitute, a menace to air navigation. There is no such danger here, with respect to White's proposed facility.

6. The imposition of the condition set forth above in ¶ 1 previously has been used to resolve similar EMI issues. See, Texas Communications Limited Partnership, 5 FCC Rcd 1592 (ALJ, 1990), aff'd, 5 FCC Rcd 5876 (Rev. Bd. 1990); Q Prime, Inc., Memorandum Opinion and Order, FCC 91M-817 (Released March 4, 1991) (copy attached, Attachment 2); Roxanne Givens, FCC 89M-2754 (Released December 7, 1989) (copy attached, Attachment 2). Where the FAA did not oppose the use of the conditional grant clause, the Commission and the Presiding Judges in those cases granted the construction permit subject

to the conditional clause set forth above.

7. The Bureau itself has supported summary decision through the use of the conditional clause. As recently as February 20, 1991, the Bureau has stated its willingness to accept such a clause as a condition to a construction permit where the EMI issue had been raised. See, Mass Media Bureau Comments on Motion for Summary Judgment, attached hereto as Attachment 3.

8. Grant of summary decision will promote the public interest by reducing the issues in this proceeding, and by permitting the construction of White's new FM facility at Baldwin, Florida at the earliest possible date, after a construction permit is granted by the Commission. Grant of summary decision with the conditional clause will moot the air hazard issue, and will thus promote administrative convenience.

9. White recognizes that it may be obliged to resolve the EMI problem with the FAA at a later date, and intends to do so, if possible, prior to the construction of its proposed facility. However, imposition of the above condition will permit construction and new service, while allowing the FAA the opportunity to object to the Commission, in the event of any actual, perceived interference to local air navigational systems.

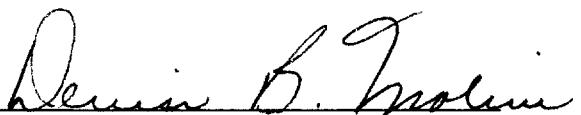
10. Summary decision on the EMI air hazard issue specified against White is therefore warranted. The antenna

structure proposed by White complies with all FAA regulations, and will not pose a physical hazard to air navigation. The potential for EMI interference may be adequately met through the imposition of a condition on White's construction permit, a procedure which has been utilized in other proceedings, and is appropriate here. No material question of fact remains to be decided at a hearing regarding the air hazard issue against White.

WHEREFORE, the foregoing considered, White respectfully requests that the Presiding Judge GRANT the instant Motion for Summary Decision, and RESOLVE the air hazard issue in White's favor.

Respectfully submitted,

Charley Cecil & Dianna Mae White
d/b/a
WHITE BROADCASTING PARTNERSHIP

By: 
Denise B. Moline

Its Attorney

McCabe & Allen
9105B Owens Drive
P.O. Box 2126
Manassas Park, VA 22111

(703) 361-2278

March 21, 1991

MM Docket No. 91-10
WHITE BROADCASTING PARTNERSHIP

BALDWIN, FL
MOTION FOR SUMMARY DECISION
ATTACHMENT 1

FAA Notice and Clarification Letter



U.S. Department
of Transportation
Federal Aviation
Administration

Southern Region

P. O. Box 20636
Atlanta, Georgia 30320

August 23, 1990

WHITE BROADCASTING PARTNERSHIP
ATTN: Ms. Dianna White
707 Newport Street
MacClenny, Florida 32063

Dear Ms. White:

This is in response to your FAA Form 7460-1, Notice of Proposed Construction or Alteration, dated December 12, 1989, proposing a new FM radio station near Baldwin, Florida. Specific information is as follows:

AERONAUTICAL STUDY NO. 89-ASO-2560-OE

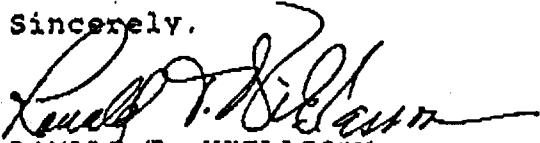
SPONSOR	:	White Broadcasting Partnership
STRUCTURE	:	FM Antenna Tower (105.7mHz/6kW)
LOCATION	:	Baldwin, Florida
LATITUDE/LONGITUDE	:	30'23'25"N./82'00'37"W.
HEIGHTS	:	343 feet AGL, 423 feet AMSL.

The preliminary review revealed a potential Electromagnetic Interference (EMI) problem with respect to intermodulation with the Jacksonville International Airport Runway 13 (I-CZH) localizer facility.

A copy of the Spectrum Management and Systems Support Section evaluation report is enclosed for your information. Unless this potential EMI problem can be resolved the above tower location would have substantial adverse effect upon aeronautical operations and would receive a Determination of Hazard to Air Navigation.

Should you require additional information please let me know.

Sincerely,


RONALD T. NIKLASSON
Airspace Specialist
System Management Branch
Air Traffic Division

ENCLOSURE

cc:ASO-424/ASO-483/FCC/ATP-210/Carl E. Smith

REVIEW OF AIRSPACE STUDY
89-ASO-2560-OE
BALDWIN, FL
ANTENNA TOWER. FREQ. 105.7MHz

An analysis of airspace study 89-ASO-2560-OE (coordinates listed as 30-23-25 latitude and 82-00-37 longitude) revealed intermodulation interference with the Jacksonville, FL, 108.9MHz Localizer. The application was analyzed using the Generic FM (Radiation Pattern) antenna type with an ERP of 6kW and the overall height above mean sea level (MSL) of 423'.

INTERMODULATION INTERFERENCE:

The Spectrum Engineering Section, ASO-483 object to this proposal based on our analysis which indicates that aircraft operating in the frequency protect service volume (FPGV) making an instrument landing system (ILS) approach to Runway 13 at Jacksonville International Airport will be subject to hazardous two signal/third order intermodulation interference of type (A) $2f_1 - f_2$ in navigation receiver overload. This interference would be caused by the proposed frequency in combination with existing station as follows:

Type (A).
[[2(WCRJ, 107.3MHz)] - (FROP, 105.7MHz) = 324.108.9MHz]

Intermodulation interference occurs whenever two or more signals or their integer multiples combine in such a manner that the product is the frequency to which the receiver is tuned. These signals combine in the nonlinear external devices to produce sum difference frequencies through heterodyne action.

Based on our analysis of the subject airspace study we cannot concur with the proponent's request.

Freddie T. Massey
Freddie T. Massey, Supervisor
Spectrum Engineering Section, ASO-483

Date: 6/7/90



U.S. Department
of Transportation
Federal Aviation
Administration

Southern Region

P. O. Box 20836
Atlanta, Georgia 30320

March 14, 1991

WHITE BROADCASTING PARTNERSHIP
ATTN: Ms. Dianna White
707 Newport Street
MacClenny, Florida 32063

Dear Ms. White:

This is in further response to your FAA Form 7460-1, Notice of Proposed Construction or Alteration, dated December 12, 1989, proposing a new FM radio station in Florida. Specific information is as follows:

AERONAUTICAL STUDY NUMBER	:	89-ASO-2560-OE
SPONSOR	:	White Broadcasting Partnership
STRUCTURE	:	FM Antenna Tower (105.7mHz/6kW)
LOCATION	:	Baldwin, Florida
LATITUDE/LONGITUDE	:	30°23'25"N./82°00'37"W.
HEIGHTS	:	343 feet AGL, 423 feet AMSL.

The preliminary review did not reveal any FAR Part 77 obstruction standards were exceeded. Therefore, the electro-magnetic interference problem is the only issue that remains to be resolved.

If you have any questions, please let me know.

Sincerely,

RONALD T. NIKLASSON
Airspace Specialist
System Management Branch
Air Traffic Division

MM Docket No. 91-10
WHITE BROADCASTING PARTNERSHIP

BALDWIN, FL
MOTION FOR SUMMARY DECISION
ATTACHMENT 2

O Prime, Inc., Memorandum Opinion and Order
FCC 91M-817, Released March 4, 1991

Roxanne Givens, Memorandum Opinion and Order
FCC 89M-2754, Released December 7, 1989

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 91M-817
2941

In re Applications of	)	MM DOCKET NO. 90-418
Q PRIME INC.	)	File No. BPH-890411MA
SMITH BROADCASTING, INC.	)	File No. BPH-890412MC
ATWATER KENT COMMUNICATIONS INC.	)	File No. BPH-890412MD2
COLUMBIA RIVER WIRELESS, INC.	)	File No. BPH-890412MF
FLORINDA J. WEAGANT	)	File No. BPH-890412MI
McCOY COMMUNICATIONS LIMITED PARTNERSHIP	)	File No. BPH-890413MA
KLRK, INC.	)	File No. BPH-890413MC
THOMAS M. EELLS	)	File No. BPH-890413MH
CLARK BROADCASTING LIMITED PARTNERSHIP	)	File No. BPH-890413MJ
BERNARD V. FOSTER	)	File No. BPH-890413MK
VANCOUVER FM BROADCASTERS LIMITED PARTNERSHIP	)	File No. BPH-890413ML
COLUMBIA-WILLIAMETTE LIMITED PARTNERSHIP	)	File No. BPH-890413MW
COLUMBIA FM LIMITED PARTNERSHIP	)	File No. BPH-890413NH
ANDREW L. BROWN & LESTER M. FRIEDMAN d/b/a TRANS-COLUMBIA COMMUNICATIONS	)	File No. BPH-890413NL
For Construction Permit for a New FM Station on Channel 290C2 in Vancouver, Washington)	

MEMORANDUM OPINION AND ORDER

Issued: February 28, 1991

Released: March 4, 1991

1. Under consideration are a Motion for Summary Decision filed on February 6, 1991, by Columbia River Wireless ("Wireless"); an opposition filed on February 19, 1991, by KLRK, Inc. ("KLRK"); an opposition filed on February 20, 1991, by Florinda J. Weagant ("Weagant"); and comments in support of the motion filed on February 20, 1991, by the Mass Media Bureau.

2. Wireless seeks summary decision of the air hazard issue specified against it in the Hearing Designation Order in this proceeding, 5 FCC Rcd 7160

(1990) ("HDO"). The issue was predicated upon a determination by the Federal Aviation Administration ("FAA") that the facilities proposed by Wireless may have an adverse effect on the FAA's navigational aid facilities and cause electromagnetic interference ("EMI") with aircraft navigational receivers during final approach and landing at Portland, Oregon. HDO at para. 11. In support of its motion, Wireless states that it is willing to accept a specified condition on its construction permit which would require it, inter alia, to take corrective action should its proposal cause EMI. Wireless contends that this approach has been taken in other Commission proceedings, and that it is appropriate here.

3. KLRK and Weagant oppose summary decision of the air hazard issue arguing that it is procedurally defective, that conditioning a grant to Wireless would be unfair to other applicants whose proposals do not present EMI problems, and that material and substantial questions of fact exist. The Mass Media Bureau supports summary decision, stating that the specified condition will moot the air hazard issue.

4. Wireless's motion will be granted. Given the imposition of the condition, it is clear that the air hazard issue will become moot. KLRK's and Weagant's arguments to the contrary are unpersuasive and are rejected. Cf. Texas Communications Limited Partnership, 5 FCC Rcd 5876, 5879 (Rev. Bd. 1990). Consequently, it is concluded that no genuine issue of material fact remains for determination at the hearing, and that Wireless is otherwise entitled to summary decision. See Section 1.251(d) of the Commission's Rules.

Accordingly, IT IS ORDERED that the Motion for Summary Decision filed by Wireless on February 6, 1991, IS GRANTED, and Issue 3 IS RESOLVED in its favor.

IT IS FURTHER ORDERED that, in the event Wireless's captioned application for a construction permit is granted, such grant will be subject to the following condition:

Upon receipt of notification from the Federal Communications Commission that harmful interference is being caused by the operation of the licensee's (permittee's) transmitter, the licensee (permittee) shall either immediately reduce the power to the point of no interference, cease operation, or take such immediate corrective action as necessary to eliminate the harmful interference. This condition expires after one year of interference-free operation.

FEDERAL COMMUNICATIONS COMMISSION

Arthur I. Steinberg

Arthur I. Steinberg
Administrative Law Judge

FCC MAIL SECTION

SECRET FILE COPY
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DEC 7 12 00 PM '89

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 89M-2754

789

In re Applications of	)	MM DOCKET NO. 89-387
ROXANNE GIVENS	)	File No. BPH-871202MC
MINNESOTA PUBLIC RADIO	)	File No. BPH-871203MC
NANCY JEAN PETERSON	)	File No. BPH-871203MF
SOUTHWEST SUBURBAN BROADCASTING, INC.	)	File No. BPH-871203MH
CRIMIEL COMMUNICATIONS ASSOCIATES LIMITED PARTNERSHIP	)	File No. BPH-871203MN
N. WALTER GOINS	)	File No. BPH-871203NE
JH BROADCAST LIMITED PARTNERSHIP	)	File No. BPH-871203NF
ANNE M. COUNIHAN	)	File No. BPH-871203NQ
COVE COMMUNICATIONS, INC.	)	File No. BPH-871203NT
For Construction Permit for a New FM Station on Channel 289A in Eden Prairie, Minnesota)	

MEMORANDUM OPINION AND ORDER

Issued: December 6, 1989;

Released: December 7, 1989

Background

1. This is a ruling on Motion To Enlarge Issues filed on October 18, 1989, by Minnesota Public Radio ("MPR"). In its Motion, MPR seeks a form of air hazard issue against five competing applicants: Southwest Suburban Broadcasting, Inc. ("SSBI"), N. Walter Goins ("Goins"), JH Broadcast Limited Partnership ("JH"), Anne M. Counihan ("Counihan") and Cove Communications, Inc. ("Cove"). Oppositions were filed on November 1, 1989, by SSBI, Goins, Counihan and Cove. There is no record of an Opposition being filed by JH. MPR filed its Consolidated Reply on November 20, 1989. ¹

¹ Allied pleadings were filed as follows: Goins filed a Supplement on November 14, 1989; Cove filed a Supplement on November 6, 1989; and MPR filed an Errata on November 21, 1989.

Facts

2. An air hazard issue was specified in the Hearing Designation Order (DA 89-1024) against 8 applicants who had not received FAA determinations that their technical proposals would pose no hazard to air navigation. See 4 F.C.C. Rcd 6756, released September 7, 1989, at Paras. 11, 20(5). Only four of those applicants are now prosecuting their applications. However, in a subsequent development, two other applicants, Goins and Cove, received notices from FAA that their clearances were being rescinded. MPR alleges that all applicants in this case face the same Electromagnetic Interference (EMI), all are predicted to have their FAA clearances rescinded and, therefore, each should have an air hazard issue added against the respective proposals. Therefore, in addition to Goins and Cove, air hazard issues are also sought to be added against SSBI, JH and Counihan.

3. The circumstances concerning FAA's re-evaluations stem from computerized calculations for measuring interference with transmission of air navigation facilities. According to MPR's engineering expert, the five applicants succeeded in obtaining initial clearance at a time when FAA was using the so-called "Venn Diagram" analysis technique to measure the potential for interference. Apparently, it was during the pendency of the Eden Prairie applications that the FAA adopted a new procedure for evaluation which is more restrictive called the "Airspace Analysis Model." According to the MPR expert, if the proposals of the applicants who have not received air hazard determinations, or who have had their earlier positive clearances revoked under the new evaluation procedures, all will suffer the same predicted EMI problems which prevented MPR from getting its FAA clearance.

4. The FAA's objections are not based on the heights of any of the proposed facilities but are based instead on the use of Channel 289A in the Eden Prairie area. Therefore, the FAA objections would be the same for all applicants.

Discussion

5. The Oppositions have been reviewed in docket order. Also, since the same malady seems to apply uniformly to all applicants, a common solution is the most efficient way to resolve the matter rather than add litigation issues.

6. SSBI suggests in its Opposition that rather than litigate a common air hazard issue, the winning applicant should receive a construction permit that is conditioned on resolving the EMI issue with the FAA. Goins, Counihan and Cove have petitioned the FAA for review of their clearance denials which are still pending final resolution.

7. Cove also cites a letter from former Chairman Fowler to the FAA's Administrator dated July 12, 1985. The letter acknowledges that there are ongoing discussions between FCC staff and FAA staff on procedures to ensure against electromagnetic interference to air navigation communication and, as a "first step":

[T]he Commission will add limiting conditions to the authorization (Construction Permit) granted to

broadcast station applicants, to cover those conditions where the FAA considers the nature of the potential electromagnetic interference sufficient to warrant such action, to preclude creating danger to aviation safety.

See Cove Opposition at Exh. 4.

8. Understandably, MPR wishes to see all parties faced with a common issue or be relieved of the need to face the issue. Thus, as ruled at the Prehearing Conference, to the extent that MPR faces an air hazard issue based on a failure to meet FAA EMI requirements, that issue will be treated as moot. Prehearing Conference, November 21, 1989 at Tr. 21-24.

9. In its Reply pleading, MPR notes that SSBI, Goins, Cove and Counihan now have no FAA clearance and JH has defaulted on the motion. There MPR also argues in the alternative that if issues are not added against the other five applicants who, like MPR, have the same problem with EMI, then the issue against MPR should be deleted.

10. Based on the letter communication from the Chairman to FAA in 1985, and with the concurrence of all parties, including the Bureau, there will be no issues added against these five applicants. Also, in the interests of equity and efficiency, the air hazard issue against MPR will not be further prosecuted under any theory involving a failure to meet the FAA's current EMI standards. Nor will any other party face a disqualifying air hazard issue in this case that is based on a failure to meet the FAA's current EMI standards.

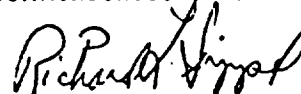
Ruling

Accordingly, IT IS ORDERED that the Motion To Enlarge Issues filed on October 18, 1989, by Minnesota Public Radio seeking the addition of air hazard issues against Southwest Suburban Broadcasting, Inc., N. Walter Goins, JH Broadcast Limited Partnership, Anne M. Counihan, and Cove Communications, Inc. IS DENIED.

IT IS FURTHER ORDERED that the air hazard issue cited by the Commission against Minnesota Public Radio, insofar as it is based on a failure to meet FAA EMI standards, WILL NOT BE PROSECUTED in this case.

IT IS FURTHER ORDERED that any grant of a construction permit in this proceeding to any applicant who has not satisfied the FAA's EMI standards SHALL BE CONDITIONED in accordance with terms to be submitted by the Mass Media Bureau before a final order is issued by the Presiding Judge.

FEDERAL COMMUNICATIONS COMMISSION



Richard L. Sippel
Administrative Law Judge

MM Docket No. 91-10
WHITE BROADCASTING PARTNERSHIP

BALDWIN, FL
MOTION FOR SUMMARY DECISION
ATTACHMENT 3

Mass Media Bureau Comments in Support
of Motion for Summary Decision of
Columbia River Wireless
February 20, 1991

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554

In re Applications	)	MM Docket No. 90-418
)	
Q PRIME, INC.	)	File No BPH-890411MA
)	
<u>et al.</u>)	
)	
For Construction Permit for a)	
New FM Station on Channel 290C2)	
Vancouver, Washington)	

To: Administrative Law Judge
Arthur I. Steinberg

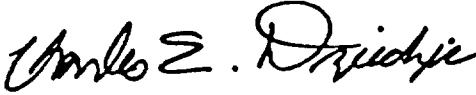
MASS MEDIA BUREAU'S COMMENTS ON
MOTION FOR SUMMARY DECISION


1. On February 6, 1991, Columbia River Wireless (Wireless) filed a motion seeking summary decision in its favor on the air hazard issue specified against it in the Hearing Designation Order in this proceeding, 5 FCC Rod 7160 (1990)(HDO). The Mass Media Bureau hereby offers its comments in support of Wireless' motion.

2. The air hazard issue against Wireless is predicated on a determination by the Federal Aviation Administration (FAA) that Wireless' proposal would create a potential for electromagnetic interference (EMI) with aeronautical navigation equipment. To meet this issue, Wireless states that it is willing to accept a specified condition on its construction permit which would require it to, inter alia, take corrective action should its proposal cause EMI.

3. Wireless' acceptance of the condition specified in its motion for summary decision moots the air hazard issue. Consequently, there is no genuine issue of material fact to be determined at hearing and the issue should be deleted. See Section 1.251(a)(1) of the Commission's Rules.

Respectfully submitted,
Roy J. Stewart
Chief, Mass Media Bureau


Charles E. Dziedzic
Chief, Hearing Branch


Robert A. Zauner
Attorney
Federal Communications Commission

February 20, 1991

Certificate of Service

Michelle Mebane, a secretary in the Hearing Branch, Mass Media Bureau, certifies that she has on this 20th day of February 1991, sent by regular United States mail, U.S. Government frank, copies of the foregoing "Mass Media Bureau's Comments on Motion for Summary Decision" to:

Greg Walden, Esq.
Chief Counsel
Federal Aviation Administration
800 Independence Avenue
Washington, D.C. 20791

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Reddy, Begley & Martin.
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Washington, D.C. 20036

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Thelen, Marrin, Johnson & Bridges
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Miami, Florida 33056

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Suite 600
Washington, D.C. 20036

Arthur Belendiuk, Esq.
Smithwick & Belendiuk
2033 M Street, N.W.
Suite 207
Washington D.C. 20036

Michelle Mebane
Michelle Mebane

CERTIFICATE OF SERVICE

I, Kelly A. O'Donnell of the Law Firm of McCabe & Allen, do hereby certify that I have caused to be served, this 21st day of March, 1991, by First-class mail, postage prepaid, a copy of the foregoing "Motion for Summary Decision" on the following:

- * Honorable Edward Luton
Administrative Law Judge
Federal Communications Commission
2000 L Street, N.W., Room 225
Washington, D.C. 20554
- * Paulette Laden, Esq.
Hearing Branch
Federal Communications Commission
2025 M Street, N.W., Room 7212
Washington, D.C. 20554
Counsel for the Mass Media Bureau

David Honig, Esq.
1800 N.W. 187th Street
Miami, FL 33056
Counsel for Peaches Broadcasting, Ltd.

Allan G. Moskowitz, Esq.
Kaye, Scholer, Fierman, Hays & Handler
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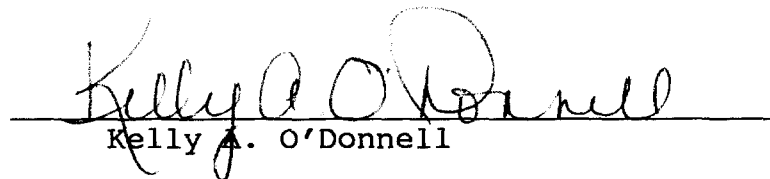
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